

INTERLOCAL AGREEMENT

TO IMPLEMENT THE LAKE TAHOE TOTAL MAXIMUM DAILY LOAD

WHEREAS, Lake Tahoe is one of the rare large alpine deepwater lakes in the world with unique transparency, color and clarity, and is designated a Water of Extraordinary Aesthetic or Ecologic Value by the State of Nevada;

WHEREAS, degradation of Lake Tahoe's water quality threatens its ecological functions and its value as an outdoor recreational resource, international tourism attraction, and economic asset;

WHEREAS, stormwater runoff from urban land uses is the largest source of pollutant loads that impairs Lake Tahoe water quality and the management and control of storm water runoff provides the principal opportunity to control these pollutants;

WHEREAS, to restore Lake Tahoe's water quality and clarity to acceptable levels, the United States Environmental Protection Agency (USEPA) approved the Lake Tahoe Total Maximum Daily Load (TMDL) in August 2011. Pursuant to NRS 445A.580, the Lake Tahoe TMDL is a component of the planning process established for restoring impaired water bodies in Nevada, which the Parties believe may be more effectively achieved through the cooperative implementation of water quality improvement actions as opposed to a regulatory permit;

WHEREAS, the Parties are public agencies as defined in NRS 277.100(1)(a);

WHEREAS, NRS 277.110(2) provides that any two or more public agencies may enter into agreements with one another for joint or cooperative action under the provisions of NRS 277.080 to 277.170, inclusive;

WHEREAS, the Parties agree to work together in good faith using a collaborative approach to implement the Lake Tahoe TMDL on a feasible schedule;

NOW, THEREFORE, the Parties hereby execute and abide by the terms and conditions contained within this Interlocal Agreement (Agreement).

I. PARTIES & ROLES

- A. The *Parties* to this Agreement are the Nevada Department of Transportation (NDOT) and the Nevada Division of Environmental Protection (NDEP). Herein, these entities in sum shall be collectively referred to as the *Parties*. Any singular entity may be referred to as *Party*. The term *Urban Implementing Partners* refers collectively to the implementing entities: Washoe County, Douglas County and the Nevada Department of Transportation (NDOT).
- B. NDOT will serve as the lead entity for all undertakings related to the planning, execution, financing and coordination of implementation, tracking and reporting of urban load reduction actions within its jurisdiction. NDOT will communicate, coordinate and cooperate with public and private entities, including other Urban Implementing Partners, in cases where joint management actions are desirable or beneficial. It may be necessary to establish formal agreements with applicable participatory public and private entities to achieve the Purpose (Section III) of this Agreement. At NDOT's request, NDEP will actively participate in the coordination and establishment of such agreements.
- C. NDEP will oversee implementation of the Lake Tahoe TMDL within the State of Nevada via this Agreement while it remains in effect. NDEP will continue to develop and adaptively manage in a transparent and inclusive manner, programs, policies and protocols necessary to track, report, evaluate and demonstrate incremental progress towards achieving the goals established by the TMDL.

II. BACKGROUND

- A. The Federal Clean Water Act requires states to adopt standards to protect beneficial uses designated for waterbodies and to monitor and assess these waters for impairment. Assessment of Lake Tahoe monitoring data prompted its listing on Nevada's List of Impaired Waterbodies for non-attainment of the clarity standard and impairment of the Water of Extraordinary Aesthetic or Ecologic Value beneficial use designation.
- B. Non-attainment of water quality standards requires the development of restoration plans called Total Maximum Daily Loads under the federal Clean Water Act. The Nevada Division of Environmental Protection (NDEP) collaborated with the California Lahontan Regional Water Quality Control Board (Lahontan Water Board) for more than a decade to develop the Lake Tahoe TMDL to address Lake Tahoe's degraded clarity. The USEPA approved NDEP's TMDL on August 16, 2011.
- C. The overarching goal of the TMDL is to return Lake Tahoe to its historic annual average deepwater clarity of 97.4 feet (Numeric Target). The TMDL also established an interim goal termed the "Clarity Challenge" that, if achieved, would indicate reversal of the historic declining clarity trend. It is anticipated

that achieving the 15 year pollutant load reduction milestone in 2026, will result in an annual average clarity of 78 feet as measured over the period from 2026-2031.

- D. The TMDL identifies fine sediment particles (FSP), total phosphorus (TP) and total nitrogen (TN) as the pollutants of concern for deepwater clarity. Each controls the distance that light is able to penetrate into the water column. However, the light scattering effect of FSP less than sixteen micrometers in diameter (<16 µm) was determined to exhibit a greater influence on clarity.
- E. The TMDL analysis indicates that achieving the TMDL goal is possible with substantial pollutant load reductions from the urban stormwater source category. Stormwater runoff from urban land uses is the largest loading source of FSP and phosphorus to the Lake and also the greatest opportunity to reduce loadings of these pollutants. Broader application of conventional urban stormwater treatment will be beneficial; however, implementation of innovative and advanced controls may be necessary to meet TMDL goals. Examples include: alternatives to roadway abrasives applications, advanced roadway sweeping practices and equipment, and enhanced stormwater treatment using biological or chemical processes.
- F. The TMDL establishes five-year pollutant load reduction milestones for the urban stormwater source category as indicated in Table 1, assuming that global climate change, catastrophic events, economic factors, and/or other unavoidable constraints do not adversely affect progress.

Table 1. Urban stormwater pollutant load reduction milestone schedule established by the Lake Tahoe TMDL. MS = milestone; Year = water year in which milestone ends (September 30 of indicated year); FSP = Fine Sediment Particles; TP = Total Phosphorous; TN = Total Nitrogen. Percent reductions are from jurisdiction baseline values. Shading represents the timeframe under this agreement.

Five-year Pollutant Load Reduction Milestone Schedule													
MS	5 yr	10 yr	15 yr	20 yr	25 yr	30 yr	35 yr	40 yr	45 yr	50 yr	55 yr	60 yr	65 yr
Year	2016	2021	2026	2031	2036	2041	2046	2051	2056	2061	2066	2071	2076
FSP	10%	21%	34%	38%	41%	45%	48%	52%	55%	59%	62%	66%	71%
TP	7%	14%	21%	23%	26%	28%	31%	33%	36%	38%	41%	44%	46%
TN	8%	14%	19%	22%	25%	28%	31%	34%	37%	40%	43%	46%	50%

- G. The Lake Clarity Crediting Program (Crediting Program) was developed jointly by NDEP and the Lahontan Water Board to define standardized protocols for the comprehensive and consistent quantification, tracking and reporting of load reduction actions taken by local governments and state transportation agencies. The program incentivizes Urban Implementing Partners to implement priority controls to meet load reduction targets and provides accountability for the expenditures of public funds on such actions.

III. PURPOSE

The purpose of this Agreement is to formally establish a commitment by each signatory Party to make a collective effort to restore and protect Lake Tahoe's clarity. This Agreement outlines goals, commitments and actions which the Parties agree to pursue in good faith. In identifying the actions and responsibilities of each Party, this Agreement provides the framework for the successful implementation of the Lake Tahoe TMDL, and the attainment of the goals set forth therein, on a feasible schedule. Inherent in the use of this agreement-based approach is the acknowledgement that implementation success is, in part, dependent upon the establishment of a process that cultivates collaboration and cooperation between NDOT and NDEP.

IV. COMMITMENTS & ACTIONS

The Parties hereby commit to implement the following actions, and abide by the following conditions:

A. Pollutant Controls

1. NDOT will prepare and maintain a Stormwater Load Reduction Plan (SLRP) that specifies the priority list of pollutant control actions and projects NDOT has registered and anticipates registering through the Lake Clarity Crediting Program (Crediting Program; Section IV.B) to meet the credit milestones and targets contained in Table 2. The Parties acknowledge that planning beyond the term of the agreement is needed to ensure future load reduction targets will be met. The SLRP shall be maintained as a five year schedule that is updated and reported as a component of the Annual Stormwater Program Report (Section IV.D).
2. NDOT will implement, operate, inspect and maintain the pollutant controls identified in the SLRP according to the schedule indicated. NDOT will oversee and coordinate financing for all aspects of pollutant control implementation including planning and design, construction, and activities related to Crediting Program participation. NDOT, as an implementing entity, will pursue self-funded and external funding sources to implement the SLRP. NDOT acknowledges and accepts the responsibility to fund operations and maintenance of the pollutant controls implemented.

B. Lake Clarity Crediting Program

1. NDOT will participate in the Lake Clarity Crediting Program (Crediting Program). NDOT will register and verify pollutant controls in accordance with the protocols specified in the Crediting Program Handbook and associated stormwater tools. Improvements to Crediting Program protocols or tools will not require adjustments to load reduction estimates or credit schedules of registrations in effect at the time such programmatic changes are made.

2. NDEP will administer the Crediting Program in accordance with the Program Handbook. NDOT implementation progress will be measured, tracked and assessed in accordance with the protocols contained in the Program Handbook. Credits will be awarded to NDOT for the continued implementation and registration of ongoing, effective pollutant controls that reduce pollutant loads to Lake Tahoe.
3. NDOT will strive to achieve the five-year credit milestones ("Milestones") and intermediate annual credit targets ("Targets") established in Table 2. Attainment of the five-year credit milestones will demonstrate accomplishment of the FSP load reduction milestones established by the TMDL.
 - a. Annual credit targets established for intermediate years are guidelines used for the purpose of demonstrating incremental progress toward attaining five-year milestones and will not be used to determine compliance with this agreement on an annual basis.
 - b. NDOT may propose an alternate schedule of intermediate credit targets that are better aligned with planned implementation activities and include updates to the intervening goals in the Annual Stormwater Program Report.

Table 2. Five-year FSP load reduction and associated credit milestones (bold) and intermediate FSP load reduction and associated credit targets established for NDOT. The water year begins on October 1 and ends September 30 of the year indicated. Credit declarations are reported in the Annual Stormwater Program Report, due on March 15 of the following year.

Water Year	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
FSP Load Reduction	10%	12%	15%	17%	19%	21%	23%	25%	28%	31%	34%
Credit Target/ Milestone ¹	79	123	154	174	195	215	236	256	287	318	349

¹ Credit Targets/Milestones for 2016 are based on a Jurisdiction Baseline Load estimate conducted in 2013, while Credit Targets/Milestones for years 2017-2026 are based on revised Jurisdiction Baseline Load estimates produced in 2016.

4. NDOT will implement an inspection program to assess the condition of registered pollutant controls in accordance with the Crediting Program Handbook. NDOT, or a qualified third party conducting the condition assessment observations on its behalf, will coordinate with NDEP for their participation during field inspections. During joint inspections, NDOT, and/or the third party representative thereof, and NDEP will attempt to agree on the measurements to be recorded. The Parties retain the option to record different results if agreement on observations cannot be reached.

5. NDEP, jointly with Lahontan Water Board, will manage the Crediting Program adaptively through the TMDL Management System, a transparent and inclusive program improvement process. Any modifications or alterations to Crediting Program tools and/or protocols will be accomplished in accordance with the procedures described in the TMDL Management System Handbook, the current version of which is available on the TMDL Online Interface.

C. Stormwater Monitoring

1. NDOT will implement, either individually or collaboratively, a stormwater monitoring program. At the time of execution of this agreement, Nevada and California Urban Implementing Partners are involved in a collaborative effort to carry out the Implementers Monitoring Program (IMP). Continued implementation of the approved IMP over the term of this agreement (Section V) shall fulfill NDOT's commitment.
2. NDOT or its authorized representative will develop and submit an annual electronic report to NDEP for approval that presents, summarizes and interprets the results of the data collected during the previous water year (October 1 – September 30). The monitoring report is due on March 15 each year.
3. Within 30 days of receipt, NDEP will provide written notification of acceptance or refusal of the monitoring report. If refused, NDEP will provide a list of items to be resolved for the monitoring report to gain acceptance. NDOT or its authorized representative will address comments within 30 days and resubmit the monitoring report for NDEP acceptance. NDEP will work with NDOT and/or its authorized representative to resolve any comments remaining unsatisfactorily addressed within a timeframe agreed upon by the Parties.
4. NDOT or its authorized representative may submit proposed adjustments to the approved IMP. NDEP will consider and, within 30 days of receipt, provide written notification of acceptance or refusal of the proposal. NDEP will work with NDOT toward a mutually agreeable resolution of the issue prompting the proposed adjustment.
5. The Parties acknowledge the scale of the stormwater monitoring program is contingent upon available funding and budget allocations as determined by the governing boards of the respective Urban Jurisdictions. Should funding allocations become insufficient to implement the approved monitoring plan, an evaluation will be performed to identify where efficiencies may be gained and how the monitoring plan may be scaled to better align with the available level of funding while retaining a minimum level of scientific creditability.

D. Annual Stormwater Program Report

1. Each year by March 15, NDOT will submit to NDEP for acceptance an annual report summarizing NDOT's stormwater program progress, activities and accomplishments during the previous water year (October 1-September 30). The report shall also document upcoming and planned actions and projects

NDOT anticipates registering over a five-year planning horizon to meet the annual credit targets and five-year credit milestones identified in Table 2. The report will include a fiscal analysis that demonstrates how pollutant controls are proposed to be implemented, operated and maintained.

2. The report will include the following information:

- a. Accomplishments Summary – the report shall summarize annual progress towards meeting Table 2 credit milestones, including registered catchments and associated credit declarations. If progress is insufficient to meet any credit milestone, an explanation of causes or conditions for the shortfall shall be provided, as well as any modifications to the approach that will ensure the next five-year milestone is met.
- b. Stormwater Load Reduction Plan (SLRP) – the report will specify the priority list of pollutant controls NDOT anticipates registering through the Crediting Program over a five year planning horizon to meet the Table 2 credit milestone schedule. Specific content shall include, but is not necessarily limited to the following information:
 - i. A description, geographic location information and timeline of the pollutant controls to be implemented;
 - ii. The estimated load reduction/credit potential associated with implementation of the pollutant controls;
 - iii. Any proposal to update the intermediate credit target schedule that better aligns with planned implementation activities.
- c. Fiscal Analysis – the report will provide an estimate of the costs to administer NDOT’s Tahoe stormwater program.
 - i. Budget – estimate the total and annualized expenditures necessary to operate and maintain implemented and registered pollutant controls, as well as to design, construct, implement, operate, register, inspect and maintain pollutant controls contained in the five year SLRP.
 - ii. Finance Plan – identify and describe anticipated and/or targeted funding sources and/or finance mechanisms to cover the costs associated with the budget estimates. The plan shall identify where financing is insufficient to cover the estimated budget, as well as a discussion of future financing mechanisms being explored to allay any identified finance gap.
- d. Barriers – the report will identify constraints to implementing the pollutant controls identified in the five year SLRP, and/or to meeting established credit milestones, as well as any plans or potential mechanisms to overcome them.

- e. Baseline discrepancies – the report will provide a tabular summary of registered catchments that tracks and reports the differences in fine sediment particle loading results between the catchment-specific baseline loading estimate performed for the jurisdictional baseline load analysis and baseline scenario conducted for the purposes of registration. This information will be used to update the schedule of annual credit targets and five-year milestones contained in the 2021-2026 Interlocal Agreement.
3. Within 30 days of receipt, NDEP will provide written notification of acceptance or refusal of the Annual Stormwater Program Report. If refused, NDEP will provide a list of items to be resolved for the report to gain acceptance. NDOT will address comments and resubmit the report within 30 days. NDEP will work with NDOT to resolve any comments that remain unsatisfactorily addressed within a timeframe agreed upon by the Parties.

V. TERM & UPDATE

The term of this Agreement shall terminate on September 30, 2021. As the anticipated timeframe to achieve the TMDL numeric target is the year 2076, if the Parties fail to approve and execute a renewal of this Agreement, with or without any amendments prior to the termination date, then the Parties agree to use best efforts to comply with the terms and conditions of this Agreement until a subsequent agreement is approved and executed by the Parties. If the Parties fail to approve and execute a subsequent agreement within six (6) months of the termination date, NDEP may pursue a more regulatory approach.

VI. MODIFICATION

At any point during this term, the Agreement may be modified with the consent in writing of both signatory Parties. Modifications to the Agreement will not result in a change to or extension of the term (Section V) of this Agreement.

VII. EVALUATION & CONTINGENCY

1. NDEP will evaluate the performance of NDOT and make a determination of whether the commitments set forth in this Agreement are in good faith being met, or whether there exist other causes preventing their performance. Factors that will be considered in the evaluation of performance and/or the need to act on a contingency include but are not limited to: attainment of five-year credit milestones; the degree to which a milestone is not met; NDOT's good faith attempt to perform any commitments; changes or modifications to the Crediting Program Handbook and process that significantly affect NDOT's planning or implementation ability; economic, budget allocations, feasibility or availability of funding sources or other impediments; and past performance.

2. If NDEP determines NDOT has failed to perform its commitments under this Agreement and such failed performance has not been caused by the regulatory action of NDEP itself or by the actions or inactions of another party, NDEP will consider and evaluate the need to implement a more regulatory approach.
3. If lack of available funding or insufficient budget allocations are identified as a primary factor limiting NDOT's performance or causing the failure of performance and the attainment of credit targets or any other commitment under this Agreement, NDEP may consider extending the implementation timeframe through modification to the load reduction milestone schedule.
4. NDEP will annually evaluate the effectiveness of this Agreement. If the Agreement is determined to be ineffective at achieving its intended purpose, NDEP will consult with NDOT to determine the reasons for its ineffectiveness and develop recommendations for subsequent revisions to this Agreement.

VIII. TERMINATION

If any Party fails without adequate cause, excuse or justification to abide by any material term of this Agreement, the non-violating Party may give the violating Party a 30 day written notice to cure such failure. Failure to cure shall constitute a breach of this Agreement. If NDOT is the breaching party, NDEP may then give notice of termination of this Agreement and pursue a more regulatory approach.

IX. DISPUTE RESOLUTION

1. The Parties agree to work together in good faith to address and resolve any issues or dispute.
2. The Crediting Program Handbook contains the communication protocols to resolve disputes that may arise between NDEP and NDOT.
3. If an issue arises that is not related to the processes described in the Crediting Program Handbook, it will be handled by progressive elevation within each respective Party's management structure.
4. The NDEP Administrator is the final decision making authority for any dispute that is elevated to that level.

X. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such

remainder conforms to the requirements of applicable law and the fundamental purpose of the Agreement, and to that end the provisions of this Agreement are declared to be severable.

XI. RESERVATION OF RIGHTS

1. Nothing in this Agreement is intended to restrict the authority of any Party to act as provided by statute or regulation.
2. This Agreement is not intended to, and does not create any right, benefit or trust responsibility by any party against the Parties to this Agreement, their respective agencies, officers, or any person.
3. This Agreement is an internal agreement between the Parties and does not confer any right or benefit on any third person or party, private or public.

XII. LIMITATIONS

Nothing in this Agreement shall be construed to require actions by the Parties which are inconsistent with local, State, or Federal laws and regulations or any court order.

XIII. EXECUTION IN COUNTERPARTS

The Parties may execute this Agreement in counterparts, each of which is deemed an original and all of which constitute only one agreement.

XIV. ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of the Agreement shall be deemed to exist or to bind the Parties hereto.

XV. SIGNATORIES

Each undersigned representative to this Agreement certifies that he or she is fully authorized by the Party whom he or she represents to enter into the terms and conditions of this Agreement and to execute and legally bind such Party to this document.

NEVADA DEPARTMENT OF TRANSPORTATION REPRESENTATIVE

X Rudy Malfabon, P.E., Director
Name and Title



X 
Signature

X 11-7-16
Date

Approved as to Legality and Form:

X 
Louis F. Holland, Deputy Attorney General

X 10-27-2016
Date

NEVADA DIVISION OF ENVIRONMENTAL PROTECTION REPRESENTATIVE

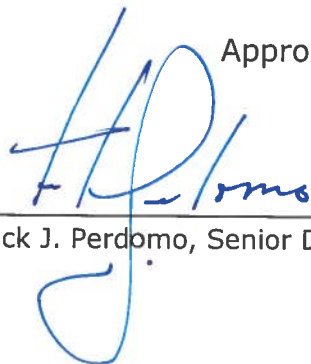
X David Emme, Administrator, NDEP
Name and Title



X 
Signature

X 11-22-16
Date

Approved as to Legality and Form:

X 
Frederick J. Perdomo, Senior Deputy Attorney General

X 11-17-16
Date